IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.623 OF 2005

Shri Dattatraya K. Metre .. Appellant

Versus

Harish Amarlal Dodeja .. Respondent

Mr.Anil Subramanium for appellant

CORAM : P.V.KAKADE, J.

DATE : 8TH AUGUST, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl.District Judge, Pune allowing the appeal and setting aside the judgment and order passed by Civil Judge, Junior Division, Pune in Civil Suit No.1535 of 2001 and directing the appellant to pay the amount of Rs.40,531/= along with consequential charges and interest at the rate of 9% p.a. towards the suit transaction.

2. I have heard the learned counsel for the appellant. Perused the record including the judgments of both the courts below.

3. The plaintiff had filed the suit for recovery of amount of Rs.63,407.00 due on account of credit facility given to the defendant. The defendant contested the suit on the ground that there was no supply of the goods and therefore, the suit was not maintainable in law.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had not proved that he had supplied the goods worth Rs.40,531/= as mentioned in the plaint para 3 and as such the suit to that effect came to be dismissed. Appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties and perusing the evidence on record disagree with the lower court’s decision and came to the conclusion that the plaintiff had proved supply of goods and as such decree came to be passed by allowing the appeal. Hence the present appeal.

4. At the outset, it may be noted that there is no substantial question of law involved in this appeal. The question whether the goods were supplied or not to the defendants is purely question of fact, which appears to be properly adjudicated and appreciated by the lower appellate court judge on the basis of available evidence. It was submitted on behalf of the appellant that under the provisions of sale of goods, it was the burden upon the plaintiff to establish that he had supplied the goods to the defendants for which the suit claim is made. In my considered view, there cannot be two opinions with regard to the said proposition. The question is whether the plaintiff had discharged his burden for establishing this aspect for which purpose he has examined not only himself but also the transporter, who had delivered the goods to the defendants. The trial court appears to have held that mere examination of the transporter would not be sufficient to establish the factum of supply of the goods and as such the claim came to be dismissed. However, the evidence is found to be sufficient to show that the said goods were delivered under the Delivery Challan and Bills duly proved on record, which are again supported by the evidence of Transporter and the lower appellate court has therefore,

recorded that the evidence in that regard was sufficient, especially when there was no evidence in rebuttal to hold that the supply was not made. Be as it may, the fact remains that the factual aspects adjudicated on merits need not be gone into, especially when the appreciation of evidence made by the lower appellate court were just, legal and proper.

5. In the result the appeal has no merits and stands dismissed. Consequently Civil Application No.1096 of 2005 also stands dismissed.